

**LEASE AGREEMENT FOR TRANSPORTATION
THROUGH THE CAP/SRP INTERCONNECTION
FACILITY AND STORAGE OF WATER AT THE
GRANITE REEF UNDERGROUND STORAGE PROJECT**

1. PARTIES:

This Lease Agreement is made and entered into the ____day of _____, 20__ by and between the Salt River Valley Water Users' Association, hereinafter referred to as "Association", and the Arizona Water Banking Authority (AWBA)

2. RECITALS:

- 2.1 Association and Participants to the Granite Reef Underground Storage Project Intergovernmental Agreement dated February 26, 1993 have constructed and Association is responsible for operating the Granite Reef Underground Storage Project (GRUSP), an underground storage facility that is located in the East Salt River sub-basin of the Phoenix Active Management Area in Maricopa County.
- 2.2 Association, on behalf of the owners thereof, operates the CAP/SRP Interconnection Facility (CSIF) which interconnects the CAP Canal with Association's Water Delivery System for the delivery of water from the CAP Canal operated by the Central Arizona Water Conservation District (CAWCD).
- 2.3 Association, on behalf of the GRUSP Participants, and in accordance with the GRUSP IGA and GRUSP Annual Operations Procedures, is authorized to broker leases to other entities for the Annual Lease Capacity at GRUSP.
- 2.4 ADWR has issued Association a Constructed Underground Storage Facility Permit (Permit No. 71-516371.0001) for GRUSP. The permit authorizes the underground storage of a maximum of 93,000 acre-feet per year for a maximum of 1.23 million acre-feet of water in storage at any time.
- 2.5 AWBA desires to store CAP water at GRUSP and Association agrees to make available storage capacity at GRUSP for such storage and CSIF capacity, in accordance with the provisions of this Lease

Agreement.

NOW THEREFORE, in consideration of the foregoing, the payments to be paid by the AWBA, and the covenants and agreements contained in this Lease Agreement, and other good and valuable consideration, Association and AWBA agree as follows:

3. DEFINITIONS:

As used in this Lease Agreement, the following terms, when capitalized, have the following meanings:

- 3.1 ADWR: The Arizona Department of Water Resources
- 3.2 Association: The Salt River Valley Water Users' Association
- 3.3 CAP (CENTRAL ARIZONA PROJECT): The water delivery works of the CAP including, but not limited to, the CAP canal, its turnout structures and associated measuring devices.
- 3.4 CSIF (CAP/SRP Interconnection Facility): The facility located adjacent to the Granite Reef Diversion Dam which interconnects the CAP aqueduct with the Association Water Delivery System and the Salt River Bed.
- 3.5 CSIF IGA: The agreement among the Association, the Salt River Project Agricultural Improvement and Power District, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe dated July 26, 1989, as subsequently amended or supplemented.
- 3.6 GRUSP (Granite Reed Underground Storage Project): The underground storage facilities generally described in Exhibit A of the Agreement.
- 3.7 GRUSP Annual Operations Procedures: The operational planning document that outlines how each Participant and Association as Operating Agent shall implement annual scheduling and leasing.
- 3.8 GRUSP IGA: The agreement among the Association, the Salt River Project Agricultural Improvement and Power District, Chandler, Gilbert, Mesa, Phoenix, Scottsdale, and Tempe dated February 26, 1993.
- 3.9 Operating Agent: The Association, in accordance with the GRUSP IGA or CSIF IGA.
- 3.10 Operating Capacity: The monthly amount of water in AF that can be physically stored in the GRUSP as determined by the Operating Agent.
- 3.11 Participants: Any one or more of the Parties to the GRUSP IGA which

owns Storage Entitlement.

- 3.12 Party/Parties: Either one or, in the plural, both parties to this Lease Agreement
- 3.13 Permit: The Constructed Underground Storage Facility Permit issued by the ADWR for GRUSP, Permit No. 71-516371.0001
- 3.14 Storage Capacity: The maximum amount of water in AF that can be physically stored in GRUSP each calendar year in compliance with the facility permit issued by ADWR, or additional document authorizing the Participants to store water at GRUSP.
- 3.15 Storage Entitlement: A Participant's individual percentage of ownership in the Storage Capacity of GRUSP, as set forth in Exhibit C of the GRUSP IGA, as revised.
- 3.16 Uncontrollable Forces: Any cause beyond the control of the Party affected, including but not restricted to failure of or threatened failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a Party to this Agreement, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it is involved. Any Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability.
- 3.17 Water Delivery System: The canal system, including canals, gates, and measuring devices, but excluding laterals and drain ditches, operated and maintained by Association to deliver water.

4. SCOPE:

This Lease Agreement is limited to (1) the storage of AWBA water by the Association at the GRUSP for the benefit of the AWBA and (2) transportation of AWBA water through the CSIF. Additionally, transportation of AWBA water in the Association Water Delivery System will require a separate Water Transportation Agreement between AWBA and Association.

5. TERM OF AGREEMENT:

This Lease Agreement shall become effective when executed by both Parties and shall remain in effect for _____ year(s) unless the Parties agree in writing to extend the term or unless it is sooner terminated or canceled in accordance with the terms of this Lease Agreement.

6. CONDITIONS RELATING TO STORAGE AND USE OF CSIF:

6.1 The transportation and storage of water under this Lease Agreement is conditioned on the following:

6.1.1 Transportation of AWBA water through the CSIF and the Association Water Delivery System, and storage of AWBA water in GRUSP is subject to the CSIF, Association, and GRUSP operating practices, respectively.

6.1.2 All storage of AWBA water shall be consistent with the GRUSP IGA, Arizona water law and with federal law applicable to GRUSP.

6.1.3 AWBA water made available pursuant to this Lease Agreement shall be stored by the Association only at GRUSP.

6.1.4 AWBA shall obtain a water storage permit from ADWR authorizing it to store AWBA's water at GRUSP.

6.1.5 Association's storage of AWBA's water at GRUSP shall, at all times, comply with the Permit. Association shall be responsible for filing annual reports as required by the Permit. Association shall promptly notify AWBA of any changes or modifications to the Permit that would affect AWBA's rights under this Lease Agreement. If the Permit is canceled or expires for any reason, AWBA may terminate this Lease Agreement.

7. SCHEDULING AND OPERATION

7.1 Delivery of water to and from GRUSP and CSIF is subject to the GRUSP IGA, CSIF IGA, this Lease Agreement and the GRUSP and CSIF operating procedures

7.2 Discrepancies between scheduled and actual water flows shall be resolved by the Parties in a mutually agreeable manner.

7.3 On or before September 15 of each year during the term of this Lease Agreement, Association shall notify AWBA of a proposed amount of GRUSP capacity available to AWBA the following year.

8. WATER DELIVERY AND STORAGE RATE:

8.1 GRUSP Storage Rate: Each year under the term of this Lease

Agreement, Association shall establish a per acre-foot GRUSP rate (“Annual GRUSP Storage Rate”) for the use of GRUSP storage capacity for the following year based on actual operation and maintenance expenses.

8.2 CSIF Use Rate: Each year under the term of this Lease Agreement, Association shall establish a per-acre foot CSIF rate (“CSIF Use Rate”) for the use of CSIF capacity for the following year.

8.3 SRP will provide notice of the GRUSP Storage Rate and CSIF Use Rate no later than September 15th each year during the term of this agreement.

9. OPERATING AGENT:

9.1 The Association shall have the sole discretion in determining whether a curtailment or stoppage of water flows to or from CSIF or to GRUSP is made necessary by circumstances existing at any time; and shall assume no liability to AWBA for such curtailment or stoppage.

9.2 The Association shall retain sole responsibility and authority for decisions relating to CSIF and GRUSP operating and maintenance practices, including maintenance scheduling and the selection of periods when maintenance will be done.

9.3 Association shall operate CSIF and GRUSP in a manner consistent with the CSIF IGA and GRUSP IGA. Whenever practicable, the Association shall inform AWBA ninety (90) days in advance of any matter which may substantially affect CSIF, GRUSP or the rights of AWBA, and of any actions to be taken by Association related thereto.

10. DESTRUCTION/RECONSTRUCTION OF GRUSP:

In the event of destruction of all or part of GRUSP, Association may repair or reconstruct GRUSP, but Association shall not be obligated to do so.

11. WATER MEASUREMENT AND ACCOUNTING:

11.1 Water measurement and accounting for water stored at GRUSP shall be done in accordance with Section 16 of the GRUSP IGA.

11.2 Water measurement and accounting for water transported through the CSIF shall be done in accordance with Section 16 of the CSIF IGA.

11.3 Association shall determine evaporation losses representative of the conditions at or near GRUSP using the method indicated in the Permit or using actual measurements, when available. Any other losses in GRUSP shall be calculated using generally accepted engineering practices.

- 11.4 Association shall prepare a monthly water accounting report of water stored at GRUSP for AWBA. The report shall include the daily amount of water stored and the losses calculated as described in this Section.
- 11.5 Association shall provide ADWR with water accounting reports for GRUSP as required by the Permit.
- 11.6 Association shall provide AWBA copies of GRUSP annual reports submitted to ADWR.

12. WATER QUALITY:

- 12.1 Nothing in this Lease Agreement shall be construed so as to require that the Association receive or transport water from any source when the Association reasonably determines that such receipt or transportation is likely to result in a violation of then existing federal, state or local laws or regulations regarding water quality.
- 12.2 AWBA shall release, hold harmless and indemnify the Association from and against all losses, liability, claims, injury or damage it incurs or suffered by third parties resulting from water quality degradation caused by the comingling of AWBA water in the Association Water Delivery System for the purpose of transporting such water for AWBA to GRUSP; provided however, that AWBA indemnification shall only extend to the percentage of degradation attributable to the AWBA water entering the Association Water Delivery System under the terms of this Lease Agreement.

13. BILLING AND PAYMENTS:

- 13.1 Bills for services provided to AWBA shall be submitted by the Association to AWBA on or before the twenty-fifth (25th) day of each month (or if such day is not a business day, on the next succeeding business day) immediately following the month during which AWBA has incurred charges for such services. Such bills may include adjustments or corrections to bills previously submitted by the Association to AWBA.
- 13.2 Payment by AWBA to the Association shall be made in good funds on or before the thirtieth (30th) day following the date on which the bill was postmarked or if such day is not a business day, on the next succeeding business day. Bills which are not paid by this date shall be delinquent and thereafter accrue an interest charge at the prime rate of interest as established by the Bank of America on the last business day of the

month following the month for which the bill was submitted, plus 6% per annum, prorated by days of the unpaid principal, computed daily until payment is received. Any payment received shall first be applied to any interest charges owed, and then to any bills owed for services rendered.

13.3 In the event any portion of any bill is disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, AWBA shall be refunded any overpayment plus interest, accrued at the rate set forth in Subarticle 13.2, prorated by days from the date payment was credited to AWBA to the date the refund check is mailed.

13.4 In the event any delinquent amount is not paid by AWBA within thirty (30) days after receipt by AWBA of written notice from the Association of the delinquency, the Association shall have the right, without liability of any kind, to refuse to transport and store AWBA water so long as the said amount remains unpaid, and may terminate this Lease Agreement. Nothing herein shall limit the rights of the Association to use any other available legal remedy to effect collection of said amounts.

14. AUTHORIZATIONS AND APPROVALS:

AWBA shall be responsible for obtaining, at its own expense, any permits, authorizations and approvals required for the underground storage and recovery of water in GRUSP or for AWBA's performance under this Lease Agreement. AWBA shall keep the Association informed of its applications for such permits and authorizations. The Association will share information with AWBA to assist AWBA in its permit application. AWBA shall also be responsible for filing any annual reports or other documents necessary to maintain its right to store water at GRUSP.

15. LIABILITY:

15.1 Except as otherwise provided in this Lease Agreement, AWBA shall indemnify, hold harmless and release Association, its directors, officers and employees against and from any damage, loss or any liability for death, injury, loss or damage incurred by any customer, citizen, employee, contractor, sub-contractor or agent of AWBA as a result of any performance pursuant to this Lease Agreement.

15.2 The obligation to indemnify under Section 12 and this Section 15 shall extend to the indemnities' share of any deductibles under any applicable insurance coverage.

- 15.3 Neither Association nor the other parties to the CSIF IGA shall assume any liability to AWBA for claims of damage resulting from Association's decision or the decision of CAWCD to curtail or stop water flows to or from the CSIF in accordance with the requirements of CAWCD and/or Association water operations, or to terminate deliveries of water to or from the CSIF solely in accordance with the requirements of Association.
- 15.4 The provisions of this Section 15 shall not be construed so as to relieve any insurer providing insurance coverage pursuant to Section 16.1 of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.
- 15.5 In the event any third party institutes an action against Association, other parties to the CSIF IGA, AWBA or other lessees of CSIF capacity, for claims arising from the activities undertaken pursuant to this Lease Agreement, the parties named in the action shall meet to coordinate the procurement of legal counsel and the steps necessary to defend against the action.

16. INSURANCE

- 16.1 During the term of this Lease Agreement, unless otherwise agreed in writing by Association, AWBA shall procure and maintain in force or cause to be procured and maintained in force, Commercial General Liability Insurance including bodily injury, personal injury, and property damage, wrongful death, and contractual liability with a minimum limit of \$5,000,000 per occurrence. Auto Liability with a minimum combined single limit of \$5,000,000 per occurrence. Both the commercial general and auto liability cover should name Association and the other parties to the CSIF IGA as additional insureds. Additionally, AWBA must show evidence of Workers compensation insurance with minimum statutory limits to cover obligations imposed by applicable federal and state statutes and Employer's Liability insurance with a minimum limit of \$1,000,000.
- 16.2 Any insurance carried by Association or other parties to the CSIF-IGA shall be excess and not contributory insurance to any insurance afforded hereunder. The commercial general liability and workers compensation insurance policies should include a waiver of subrogation in favor the Association and the other parties to the CSIF IGA. Proof of insurance

satisfactory to Association shall be submitted to Association prior to use of the CSIF by AWBA. Such proof of insurance shall be in the form of a certificate stating the coverage provided and that such insurance is in force and that such insurance shall not be canceled until after thirty (30) days prior written notice thereof shall have been given to Association.

- 16.3 With written approval of Association, AWBA may self-insure or combine the coverage's required by this Lease Agreement with coverage's outside the scope of that required by this Lease Agreement.
- 16.4 Required insurance coverage's shall be written with deductibles and limits approved by Association. Association may, at any time, change the policy limits, add or eliminate coverage(s), and shall determine appropriate deductibles or retentions.
- 16.5 If AWBA fails to acquire, provide or continue the insurance coverage's required; Association may terminate this Lease Agreement immediately upon written notice to AWBA.

17. Miscellaneous

- 17.1 The Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.
- 17.2 The Parties shall comply with State Executive Order No. 75-5, as amended by State Executive Order No. 2009-9, and all other Federal or State laws, rules and regulation, including the Americans with Disabilities Act.
- 17.3 The Parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this Agreement, and shall comply with all applicable state, federal and local laws, including but not limited to those regarding unemployment insurance, disability insurance and worker's compensation. This Agreement does not relieve either party from any obligation or responsibility imposed upon it by law.
- 17.4 Neither party shall be considered an officer, employee or agent of the other. No monitoring or supervisory responsibility over the other party's activities arises on the part of the other arises or as a result of, or pursuant to, this Agreement other than as expressly provided herein.
- 17.5 All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona and the AWBA for five (5) years after completion of the Agreement. Such records shall be produced at such

state offices as are designated by the State of Arizona and the AWBA.

18. DEFAULT:

In the event of a default by AWBA or Association of any obligation herein, then, within thirty (30) days following notice of such default by the non-defaulting Party, the defaulting Party shall remedy such default by advancing the necessary funds and/or rendering the necessary performance. Such notice shall specify the existence and nature of such default. If such default is not remedied within the time specified, the non-defaulting Party may terminate this Lease Agreement upon twenty four (24) hours written notice.

19. UNCONTROLLABLE FORCES:

No Party shall be considered in default in the performance of any of its obligations under this Lease Agreement (other than obligations of said Party to pay costs and expenses) when a failure of performance is due to Uncontrollable Forces. Nothing contained in this Lease Agreement shall be construed so as to require a Party to settle any strike or labor dispute in which it is involved. Any Party rendered unable to fulfill any of its obligations under this Lease Agreement by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability.

20. GOVERNING LAW:

The laws of the State of Arizona shall govern this Lease Agreement without regard for conflict of law principles. To the extent required by A.R.S. §§ 12-1518(B) and 12-133, the parties agree to resolve any dispute arising out of this agreement by arbitration.

21. ASSIGNMENT:

This Lease Agreement shall not be assigned by AWBA or accrue to AWBA's successor, nor shall AWBA's Lease rights hereunder be used by another party.

22. NOTICES:

22.1 Notice, demand or request provided for in this Lease Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Arizona Water Banking Authority
c/o Manager
3550 N. Central Avenue
Phoenix, AZ 85012

Salt River Valley Water Users' Association

c/o Corporate Secretary

PO Box 52025

Mail Station PAB 215

Phoenix, Arizona 85072-2025

Reference: GRUSP

22.2 A party may, at any time, by notice to the other Party, designate different or additional persons or different addresses for the giving of notices.

23. NO THIRD PARTY BENEFICIARIES:

This Lease Agreement is solely for the benefit of the Parties, and does not create nor shall it be construed to create rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this Lease Agreement.

24. WAIVER:

The waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.

25. ENTIRE AGREEMENT:

The terms, covenants and conditions of this Lease Agreement constitute the entire agreement between the Parties relative to the leasing of CSIF capacity and GRUSP capacity, and no understandings or agreements not herein expressly set forth shall be binding upon them. This Lease Agreement may not be modified or amended in any manner unless in writing and signed by the Parties.

IN WITNESS WHEREOF, this Lease Agreement is executed by the Parties hereto.

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By: _____

Attest: _____ Secretary

Arizona Water Banking Authority

By: _____

Attest: _____ Secretary